

When the Supreme Court commits six hours to hearing arguments about the health care law on March 28, multiple points of view will be raised around a core issue in the Affordable Care Act. The central argument of the case against the law is that the individual mandate is unconstitutional because the government cannot force you to engage in a specific economic behavior.

Most criminal laws prohibit certain behaviors, like speeding or violence. But the Affordable Care Act fines Americans for doing nothing – in this case for not buying health insurance.

It's a good argument. As Americans we enjoy the freedom to not do something if we choose. We don't have to get out of bed in the morning, we don't have to eat peas, and we don't have to attend military parades in the square of our Dear Leader. There are consequences to all of these choices, but the bottom line is that, as Americans, we are free to decide what is best for ourselves. The story is not the same around the world, under dictatorships in North Korea or Iran.

So what can the government require Americans to do?

One of the attorneys set to argue the Supreme Court case says that, without any limiting factors in the Affordable Care Act, the government can force Americans to buy all kinds of things, like buying cars to help improve the American auto industry.

Obviously, that is an extreme case and a hypothetical one, but the point is well-taken. Consider that the aim of the ACA is to strengthen our health care system by drawing funding and participation into it (and into the U.S. Treasury). People who are otherwise healthy are forced to pay – either through premiums or through penalties – to support that system. A major argument of the ACA is that the health care system needs more healthy customers, and the only way to convince healthy people to get insurance is to fine them if they do not.

And there you have the constitutional crisis under consideration at the Supreme Court in less than a month.

In a similar way, the government obtained the power under the ACA to mandate insurance coverage on Americans for certain medical tests, screenings or interventions. It's not just the fact that the government is forcing Americans to buy insurance, but very specific policies. They may be expensive to purchase or to provide, they may be unneeded by the customer, and they may conflict with the advice of your doctor. Still others contradict the moral beliefs of the insurance provider as recently demonstrated by the mandate on religious organizations like charities and private schools to provide abortion drugs. Some estimates indicate the mandates could end up accounting for 20 percent of the cost of the premium.

The ACA, simply put, uses mandates instead of markets.

This is not the way to expand access to Americans who need coverage. The burden of the mandate should not be on free Americans, it should be on the insurers and health care providers to serve every one of their willing customers with an affordable product or service. There are far more creative, compelling, workable and constitutional ways to create incentives to achieve this goal than the sweeping expansion of government powers embedded in the new health law.